No. 94-1916

(3)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1994

SAC-CO INC., d/b/a ACME CASH REGISTER COMPANY,
f/k/a CBS LIQUOR CONTROL, INC.,

Petitioner,

against

AT&T GLOBAL INFORMATION SOLUTIONS COMPANY,
f/k/a NCR CORPORATION

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITIONER'S REPLY BRIEF

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1994

No. 94-1916

Sac-Co, Inc.,
d/b/a Acme Cash Register Company,
f/k/a CBS Liquor Control, Inc.,
Petitioner,

v.

AT&T Global Information Solutions Company,
f/k/a NCR Corporation,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

Petitioner's Reply Brief

Respondent has barely touched upon the factors relevant to the Court's consideration of whether to grant the Petition for Writ of Certiorari. Rather than grapple with the split in the circuits as to how to analyze arbitration awards which are invalid only in part, respondent simply asserts, without real analysis, that the rule applied by the other Circuits is consistent with that applied by the Sixth Circuit in this case. *Respondent's Brief* at

4-5. Respondent is wrong. The other courts to address the question have analyzed it under §10 of the Federal Arbitration Act, favoring the approach of vacating only the offending portion of the award. The Sixth Circuit rejected that approach and analyzed it as a matter of "modification" under §11. The circuits are thus split. *See Petition* at 8-10.

Most of respondent's brief addresses the merits of the argument. Certainly, the merits will be fully briefed and argued should the Court decide to grant the Petition. However, one "fact" asserted by respondent in several places is misleading and must be corrected. Respondent claims that "the arbitrator * * * unambiguously expressed his intent that petitioner was not to receive the award of punitive damages." *Respondent's Brief* at 4. This is simply not the case. Even were the arbitrator's award enforced as written, Acme would have received some *or all* of the punitive damages award, depending upon how many other non-servicing dealers there were. His invalid *intent* was that Acme not get all of the punitive damages if, indeed, other non-servicing dealers existed. The Court of Appeals wrongly concluded that it must effectuate that invalid intent by vacating the award in its entirety, thus frustrating the arbitrator's valid intent that NCR pay punitive damages.

Respondent contends, finally, that this case is too unusual to warrant review by this Court. The themes presented by the case, however, are universal in their application to the world of commercial arbitration. When an arbitrator does something that is beyond his power, what should the reviewing court do with it? Should the award be severed and the valid portion enforced, or should it simply be vacated? Should the analysis take place under §10 or §11? Should the victim of an invalid experiment, such as Acme, be left without further remedy, or should a mechanism exist to minimize the damage done? AT&T, rightly

punished by the arbitrator, attempts to escape that punishment by resort to technicality and evasion of the true issues.

Summary and Conclusion

It is respectfully requested that the Petition be granted.

Respectfully submitted,

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